

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3529 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

C.M. JANI

Versus

COLLECTOR, AMRELI & ORS.

Appearance:

MR ND NANAVATI for Petitioner
MRS SIDDHI TALATI for Respondent No. 1
MR AD MITHANI for Respondent No. 2
None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/09/97

ORAL JUDGEMENT

1. The petitioner, an Octroi Inspector of the Amreli Nagar Palika, filed this special civil application and challenge has been made to the order of the Collector, Amreli dated 4-7-1987 passed under section 258 of the Gujarat Municipalities Act under which the promotion of the petitioner to the post of Octroi Inspector has been

declared to be illegal and arbitrary.

2. The counsel for the petitioner does not dispute that the eligibility for promotion to the post of Octroi Inspector was of graduate plus two years experience on feeder post. The counsel for the petitioner further admits that the petitioner was not possessing the qualification of graduation. However, he was having the requisite experience. The order has been challenged by the petitioner on the ground that the Collector has no power to interfere in the matter where the Municipality has relaxed the qualification. It has next been contended that the resolution which has been passed by the Municipality has been implemented and thereafter the respondent-Collector could not have exercised its power under section 258 (1). Lastly, it has been contended that the resolution passed by the Municipality was not causing any injury or annoyance to the public or led to breach of peace and it was simple dispute between the two employees.

3. On the other hand, the counsel for the State Government, Smt. Siddhi Talati, contended that the petitioner was not eligible for promotion. Relaxation in qualification would have been permissible only after prior approval of the Director of Municipalities and where the eligible candidates are not available in the feeder cadre.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. Learned counsel for the petitioner is unable to satisfy this Court that the Municipality was competent to relax the qualification as prescribed for promotion to the post of Octroi Inspector without prior approval of the Director of Municipalities and secondly despite of the availability of eligible candidates in the feeder cadre. The qualification could have been relaxed by the Municipality if there is some provision and though the provision has not been pointed out but the counsel for the respondent No.1 has given out that it is only permissible after prior sanction of Director of Municipalities and where the eligible candidates are not available. The counsel for the petitioner, as stated earlier, is unable to successfully controvert the statement made by the counsel for the respondent No.1. The counsel for the petitioner is also unable to satisfy this Court that on the day on which the Municipality passed the resolution to relax the qualification of petitioner for promotion, the eligible candidates were

not available in the feeder cadre. From the impugned order of the Collector, it comes out that the respondent No.3 was one of the eligible candidates available. The respondent No.3 is a person who had challenged that resolution of the Municipality giving the promotion to the petitioner after relaxing the qualification. It is not the case of the petitioner herein that the Municipality has taken any prior sanction of the Director of Municipalities for relaxation of the qualification as prescribed for promotion to the post of Octroi Inspector in the case of the petitioner. When the petitioner was not eligible then certainly it is a case where the Municipality in his case by relaxing the qualification and more so when the eligible candidate is available has exhibited an example of favouritism and nepotism. Only justification has been given by the Municipality that he was very senior person or senior-most in the feeder cadre. Howsoever the person may be senior but if he is not possessing the requisite eligibility prescribed for promotion to the post of Octroi Inspector he could not have been given the promotion. The Municipality in the present case has acted in total disregard of this requirement of law and taken it to be as if what it says and what is does is only the law. The very way in which the Municipality has acted in the present case is a clear case of undue favour which has been shown to the petitioner by it.

6. In view of the fact that the petitioner was not eligible for promotion and the qualification could not have been relaxed of the petitioner no other contentions raised by the counsel for the petitioner are required to be gone into. Sitting under Article 226 of the Constitution or even 227 of the Constitution of India, this Court will not perpetuate any illegality. Even if it is taken for the time being that the contentions raised by the counsel for the petitioner have some merits still setting aside of the order of the Collector impugned in this special civil application will result in restoration of the illegal and arbitrary resolution of the Municipality and further the ineligible person will be continued with the right of eligibility. This Court will further encourage the orders which has been passed by the Municipality in exhibiting only a case of favouritism and nepotism.

7. Taking into consideration, the totality of the facts of this case, I do not find any substance in this special civil application and the same deserves to be dismissed. Order accordingly. The special civil application fails and the same is dismissed. However,

the petitioner has been stated to be retired. The petitioner has been given all the benefits of retirement on the basis of taking him to be on the lower post than the Octroi Inspector. However, in case during this intervening period, the petitioner has worked on the post of Octroi Inspector under the interim order of this Court, then whatever has been paid to him by way of salary as Inspector may not be recovered. But he will not be entitled for any other benefits whatsoever only on the ground that he worked and retired on the post of Octroi Inspector. Rule discharged. Interim relief granted by this Court stands vacated. No order as to costs.

zgs/-